to area. And the tendency of American courts is toward the same doctrine, *Beal* v. *Chase* (1875) 31 Mich. 490; although they seem reluctant to accept it in its entirety. *Diamond Match Co.* v. *Roeder*, *supra*. That it should be accepted in its entirety seems eminently reasonable. It may at least be said with Mr. Justice BRADLEY of the Supreme Court of the United States: "This country is substantially one, especially in all matters of trade and business; and it is manifest that cases may arise in which it would involve too narrow a view of the subject to condemn as invalid a contract not to carry on a particular business within a particular State." *Oregon Steam Nav. Co.* v. *Winsor* (1873) 20 Wall. 64, at p. 67.

THE NEBRASKA ANTI-TRUST ACTS. The case of the *Niagara Fire Insurance Co.* v. *Cornell* (1901) 110 Fed. 817, declares unconstitutional certain anti-trust legislation of Nebraska; but does not greatly aid in the solution of the vexed problems of corporate trusts. Incidentally the case involved the right of a foreign corporation, duly licensed to do business in Nebraska, to test by injunction proceedings the constitutionality of laws which the Attorney-General of the State asserted he would not enforce. The point was decided in favor of the company on the ground that there is a presumption that the Attorney-General and his assistants must and will enforce the laws. *Contra*, *People* v. *Canal Board* (1874) 55 N. Y. 390. The statutory provision that the charges against the companies involved shall be heard by the State Auditor, although conferring judicial power on an executive official, was upheld, because the defendants were given a right of appeal to the courts.

Passing over these preliminary questions, which do not directly involve the principles of anti-trust laws,—the first provision discussed by the court was that which made the company liable for the prosecuting attorney's fee if defeated in its defense, but gave it no corresponding benefit if successful. So common is this feature in anti-trust legislation that a decision on the validity of this clause would have been of general interest. But the court preferred to decide the case upon other grounds. A Texas statute, having a similar provision in reference to suits for services performed for, or live stock killed by, railroads, was held unconstitutional by the Supreme Court of the United States, because it denied to persons the "equal protection" of the laws. *Railroad Co.* v. *Ellis* (1896) 165 U. S. 150. In the case of a Kansas statute, giving a reasonable sum for an attorney's fee to the plaintiff if he should recover in an action for damages from fire caused by the defendant railroad, but denying the same privilege to the defendant if successful the Supreme Court reached the opposite conclusion. *Railroad Co.* v. *Matthews* (1898) 174 U. S. 96. Corporations are persons within the meaning of the Fourteenth Amendment. *Covington Co.* v. *Sandford* (1896) 164 U. S. 578. The rule on which the *Matthews* and *Ellis* cases are to be reconciled is that, while persons are entitled to the equal protection of the laws, legislation cannot affect all alike. Reasonable clas-

sification may, therefore, be allowed. The peculiar dangers from fire in a prairie State make stringent regulations in regard to railroads just and desirable in such cases in Kansas. But the Texas statute applied the same severe remedies in suits for services rendered to the railroads as well as for live stock killed by them. Such a law was not justified by the peculiar circumstances of the case. It singles out railroads and imposes a heavy and unreasonable burden on them. Their entrance into a court of justice is made more onerous than that of other persons. This is discrimination and not classification. The Fourteenth Amendment is as clearly violated as if the same provision were extended to colored persons, but not to white. *Railroad* v. *Matthews*, *supra*. The rule thus laid down is clear and is approved by the Supreme Court. But its application is far from easy; and in the *Ellis* case, three justices dissented, in the *Matthews* case, four. If applied to the principal case, it would seem to invalidate that part of the statute.

But the principal ground on which both statutes are declared unconstitutional by the court here is that the they deprive persons of liberty without due process of law, because they interfere with the right to make contracts. The arguments of the court on this point are unsatisfactory and no authorities are cited in their support. Ignoring the provision that only those contracts are prohibited which are made with the intent to drive others from the same field of business, the court asserts that business would be seriously crippled, if not made impossible, by the provisions of the act. The right to restrain and prohibit the making of certain classes of contracts has been upheld as one of the police powers of the State legislatures. *United States* v. *Freight Association* (1896) 166 U. S. 324. "Notwithstanding the general liberty of contract, which is possessed by the citizen under the Constitution, we find that there are many kinds of contracts, which, while not in themselves immoral or *mala in se*, may yet be prohibited by the legislatures of the States." *United States* v. *Joint Traffic Association* (1898) 171 U. S. 572. The *Joint Traffic* case distinguishes the case of *Allgeyer* v. *Louisiana* (1896) 165 U. S. 578. There a statute prohibiting the forming of contracts outside the State with certain insurance companies not conforming to the State requirements was held unconstitutional, because such contracts were without the jurisdiction of the State. *The Joint Traffic Association* and *Allgeyer* cases together explain the law on the subject, harmonize the decisions of the Supreme Court, and prove the existence of such police power in the State legislatures. That this power may be legally exercised in the restraint of corporate trusts seems probable. Many States have such legislation. In some, it has been upheld by decisions from the highest appellate tribunals. *Commonwealth* v. *Gomstead* (Ky. 1900) 55 S. W. 720; *State* v. *Buckeye Co.* (1899) 61 Ohio St. 520, and cases therein cited; *Waters Co.* v. *State* (Tex. 1898) 44 S. W. 936.

The court's contention that the exemption of combinations of laboring men from the operation of the statute renders it uncon-

stitutional, affords a much firmer basis for its decision of the principal case. In the *Union Pipe Co.* v. *Connolly* (1900) 99 Fed. 354, the same conclusion was reached. Such provisions can hardly be supported as fair classification. Disguised attempts at discrimination should be prevented; for they deny to persons the equal protection of the laws. But see *Waters Co.* v. *State, supra; State* v. *Brewing Co.* (1900) 104 Tenn. 715. The decision in *The Waters-Pierce Co.* v. *Texas* (1899) 177 U. S. 28, is properly distinguished from the principal case, for in the former, the fact that a foreign corporation can come into a State only by its grace was involved. While a State may withdraw such permission, the passage of an unconstitutional regulation of the right of contract does not operate as such a withdrawal.

A decision of the United States Supreme Court, still further defining the principles of corporate trusts as involved in the principal case, would be of great interest in the present condition of the law.

HEARSAY IN CASES OF PEDIGREE.—The rule that hearsay evidence is admissible in cases of pedigree having since an early day, been recognized in English law, has been accurately defined and restricted to cases where a geneological dispute is in issue. In *Goodright d. Stevens* v. *Moss* (1777) Cowper, 592, Lord MANSFIELD said that tradition was sufficient evidence in cases of pedigree. This broad doctrine was limited in *Whitelock* v. *Baker* (1807) 13 Ves. 514, by Lord ELDON, who said: "It was not the opinion of Lord Mansfield, or of any judge, that tradition, generally, is evidence even of pedigree; the tradition must be from persons having such a connection with the party to whom it relates that it is natural and likely, from their domestic habits and connections, that they are speaking the truth, and that they could not be mistaken." The famous *Berkley Peerage Case*, 4 Camp. 401, decided in 1811, laid down the rule as to pedigree in a manner which has ever since been followed in the English courts. In that case it was decided that in order that declarations be admissible, the declarant must be dead and must have been related by blood or by marriage to the person whose pedigree is in question, that the declaration must have been made *ante litem motam* and that pedigree must be directly in issue.

In New York, on the other hand, the rule seems, with a few exceptions, to have been relaxed. Thus in *Jackson* v. *Cooley* (1811) 8 Johns. 99, a witness was allowed to testify as to declarations made by acquaintances of the family, although it was not even proved that the declarants were dead. The English case of *Goodright* v. *Moss, supra,* was the authority cited for the proposition. SPENCER, J., dissented. In *Jackson* v. *Boneham* (1818) 15 Johns. 226, THOMPSON, C. J., who had written the opinion in *Jackson* v. *Cooley, supra,* again allowed evidence of this character. The next case, in point of time, is *Jackson* v. *Browner* (1820) 18 Johns. 37. SPENCER, J., who had dissented in the previous cases, wrote the opinion. He suggested that the rule be narrowed, but the decision